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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

MASTEROBJECTS, INC.,  
  
Plaintiff,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:21-cv-05428-WHA (DMR)

**DEFENDANT META PLATFORMS'  
REPLY IN SUPPORT OF ITS MOTION  
FOR SUMMARY JUDGMENT**

Hearing Date: October 13, 2022  
Time: 8:00 AM  
Judge: Hon. William Alsup  
Courtroom: 12, 19<sup>th</sup> Floor

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## I. INTRODUCTION

Meta’s motion explains why MasterObjects’ claims in this case are too weak to proceed to trial. The patents are directed to an abstract idea and claim unpatentable subject matter under section 101. The undisputed facts establish critical differences between the asserted claims and the accused Typeahead feature, including as to the “asynchronous” and “query message” limitations. There is no legitimate evidence of willfulness. And if the Court precludes MasterObjects’ experts from testifying—whether because they set forth theories that MasterObjects failed to disclose during discovery, because they fail to meet the notice and reliability standards for expert testimony, or both—MasterObjects cannot prove its claims. MasterObjects does not contest the latter motion for summary judgment. And, as to the others, its scattershot arguments and colorful rhetoric do not conceal the absence of evidence supporting its claims. MasterObjects’ opposition merely serves to confirm that there is no genuine dispute of material fact precluding summary judgment.

## II. MASTEROBJECTS’ CLAIMS ARE INELIGIBLE UNDER § 101

MasterObjects’ asserted claims are ineligible under § 101 because they focus on an abstract idea (providing real-time results to a user as the user types) and merely implement that concept with conventional computer components (such as a server) without improving the computer technology itself. *See* Dkt. 208-3 (“Mot.”) 2-15; *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217-27 (2014). MasterObjects’ opposition does not change that conclusion. *See* Dkt. 233-4 (“Opp.”) 12-22.

At both steps of the *Alice* analysis, MasterObjects argues that its claims are eligible based on three features: asynchronous communication, a usability test, and a server cache. But those do not make the claims non-abstract (at step one) or add anything inventive (at step two). The first two are part of the abstract idea itself and the third is a conventional computer component performing conventional functions (storing data for easy retrieval), as discussed below. Beyond that, MasterObjects does not otherwise distinguish among its claims, thereby conceding that there are no other meaningful differences for § 101 purposes. *See British Telecomms. PLC v. IAC/InteractiveCorp*, 813 F. App’x 584, 587-88 (Fed. Cir. 2020) (patentee “forfeited its ability to argue that

1 other claims are separately patent eligible” by “not present[ing] any ‘meaningful argument for  
2 the[ir] distinctive significance’”). And MasterObjects does not, and cannot, explain why there is  
3 any material factual dispute precluding summary judgment (there is not). Therefore, all of Mas-  
4 terObjects’ asserted claims are ineligible as a matter of law.<sup>1</sup>

5 **A. The Asserted Claims Are Directed To The Abstract Idea of Providing Real-**  
6 **time Results To A User As The User Enters Text**

7 At *Alice* step one, MasterObjects admits that providing real-time results (such as predictive  
8 searching or auto-completion) as a user types is an abstract idea that has been “widely” performed  
9 by computers “for years.” ’024 patent, 6:40-67; *see* Mot. 7-8; Opp. 18 (agreeing that “predictive  
10 searching in the abstract is abstract” and “auto-completion itself was known”). Yet MasterObjects  
11 contends its claims are not directed to that abstract idea for three reasons. All fail.

12 **1. MasterObjects Improperly Limits The Abstract Idea Category**

13 MasterObjects argues that its claims are not abstract because they do not “merely digitize  
14 an old economy model.” Opp. 13. That argument fails: “the category of abstract ideas is *not*  
15 *limited to economic or commercial practices* or methods of organizing human activity.” *Intellec-*  
16 *tual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1313 (Fed. Cir. 2016) (“*Symantec*”).<sup>2</sup>

17 The abstract idea category includes, for example: (i) longstanding computer activities, *see*,  
18 *e.g., Simio, LLC v. FlexSim Software Products, Inc.*, 983 F.3d 1353, 1360 (Fed. Cir. 2020) (“using  
19 graphical processes to simplify simulation building” is abstract as it was an “already-widespread”  
20 computer practice); *Symantec*, 838 F.3d at 1319 (virus screening was abstract as it “was a long  
21 prevalent practice in the field of computers”); (ii) activities that humans can perform, putting aside  
22 generic computer steps, *see, e.g., Symantec*, 838 F.3d at 1318 (email system was abstract as it was  
23 akin to mailroom); and (iii) generalized computer steps lacking a particular technological advance  
24 or implementation details, *see, e.g., RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322 (Fed. Cir.  
25 2017) (“generalized steps to be performed on a computer using conventional computer activity are

26 <sup>1</sup> MasterObjects’ procedural complaint about the timing of this § 101 motion—“Why now?” (Opp.  
27 1)—is puzzling. Eligibility is routinely resolved as a matter of law on summary judgment—i.e.,  
28 “after discovery” (*id.*)—and now is this Court’s appointed time to address summary judgment.  
*See, e.g., Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1351 (Fed. Cir. 2021) (affirming this  
Court’s summary judgment of ineligibility).

<sup>2</sup> All emphases added unless otherwise noted.

abstract”); *Aftechmobile Inc. v. Salesforce.com, Inc.*, 853 F. App’x 669, 669 (Fed. Cir. 2021) (“recitation of desired functions without corresponding recitations on how to achieve or implement [them is] abstract”). As Meta explained, MasterObjects’ asserted claims fall into each of those categories and are, therefore, abstract at step one for each of those separate reasons. Mot. 7-10.

## 2. MasterObjects’ Features Provide No Technological Improvement

MasterObjects further argues that its claims provide “specific improvements to web search technology.” Opp. 12; *see also* Opp. 13. Every word of that is wrong. The claims do not remotely recite or require any “specific improvements to ... technology.” To the contrary, the specification admits that the claimed invention uses *existing* technology—“clients” and “servers” communicating “asynchronously”—to provide results as the user types. Mot. 3-4, 9-10. The “invention can be implemented on *any* client and server system ... that support[s] asynchronous network connections”; a “client” can be “*any* process or mechanism that can send characters and receive string lists”; and the “server” can be *anything* that “handles requests for information from clients.” ’024 patent, 30:58-62, 11:57-12:1; *see* ’073 patent, 38:53-55 (any “conventional general purpose ... computer”). And the claims require only the most basic, generic computer functions for retrieving and providing data. Mot. 9-10. Nor is the claimed invention limited to the “web” or any particular network—let alone any specific improvements thereto. *See* ’024 patent, 29:48-49 (purported invention “is *not* limited to the web”). The claims also do not require or improve on any specific “search” results—they broadly encompass retrieving *any* content from “any string-based content source.” *Id.* at 6:20-22; *see also id.* at 15:26-27; *id.* at cl. 6; ’073 patent, cl. 1.

MasterObjects singles out three (and only three) claimed features—asynchronous communication, a usability test, and a server cache. Opp. 13-16. None makes the claims eligible.

### a. “Asynchronous Communication” Is Part Of The Abstract Idea

According to MasterObjects, “Meta’s abstract[ idea] ... ignores asynchronous communication.” Opp. 18. That is false. Meta expressly explained that leveraging “asynchronous communication—i.e., not having to wait to for the other side before communicating—and leveraging that approach to provide results to the client while the user is still typing (or in real time) *is the abstract idea.*” Mot. 14; *see also* Mot. 3-4 & n.2, 8. As Meta discussed (Mot. 7-8), communicating



without waiting for the other side is something computers have long done (e.g., in “auto-complete functions,” ’024 patent, 6:31-37) or that humans readily do (e.g., in everyday conversation).<sup>3</sup>

MasterObjects further argues that the claims’ use of “asynchronous communication” (to provide real-time results) improves on systems that provided results only when, for example, the user hits enter. *See* Opp. 11-12. But, again, this is merely the abstract idea itself as shown by the specification which refers to the provision of “intelligent suggestions” that “change dynamically as the user types” as “widely used throughout the computing world for many years.” ’024 patent, 6:31-37. Where, as here, the purported improvement to computer systems stems from an abstract idea, that cannot make the claims non-abstract. For example, in *Symantec*, the Federal Circuit held ineligible claims that purportedly improved on prior computer systems because they merely implemented an abstract idea (computer virus protection) in another environment (in a network instead of on a client device). 838 F.3d at 1319-21. Similarly, in *Simio*, the Federal Circuit held ineligible claims that purportedly improved on prior computer systems because they merely implemented an abstract idea (“the already-widespread practice of using graphics instead of programming”) in another context (“object-oriented simulations”). 983 F.3d at 1360. So too here.

MasterObjects insists that the claims “did not simply move” as-you-type auto-complete or predictive searching “to the server.” Opp. 19. But the specification says otherwise: the purported improvement is having the “widely used” search suggestion functionality “reside on the server, thus taking advantage of server-side power.” ’024 patent, 6:30-36, 6:44-45. Such purported improvements “inherent with applying the abstract idea” in a computer environment are “insufficient to render the claims patent eligible.” *Simio*, 983 F.3d at 1361; *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1288 (Fed. Cir. 2018). Therefore, the claims’ recitation of asynchronous client-server communication does not make the claims non-abstract.

#### **b. The “Client-Side Usability Test” And “Server-Side Cache” Do Not Make The Claims Non-Abstract**

Likewise, MasterObjects’ other two features—a “client-side usability test” and a “server-side cache” (Opp. 16)—do not save its claims. *See* Mot. 11.

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<sup>3</sup> MasterObjects concedes this point when it highlighted examples of humans talking over each other. *See* Opp. 19. That doing so may not always be helpful does not mean it is not abstract.

1 A usability test goes hand-in-hand with using asynchronous communications to provide  
 2 real-time results, as MasterObjects implicitly acknowledges. Opp. 16; Mot. 11. Providing results  
 3 from the server asynchronously means that the results can be outdated by the time they are re-  
 4 ceived. See Opp. 16. It follows that the client should test whether results are “usabl[e],” which  
 5 can be as simple as matching against the current query. Mot. 11. Therefore, a “usability test” is  
 6 part of the abstract idea and requires only basic computer processing, not a technological advance.

7 A “server-side cache” is just a cache located on the server instead of on the client. See  
 8 Opp. 16. It performs its conventional function with expected results—i.e., temporarily storing  
 9 results for easier retrieval—just in a different location. This is not a technological advance. See  
 10 BSG, 899 F.3d at 1288 (“benefits that flow from performing an abstract idea in conjunction with  
 11 a well-known database structure” not a technological advance); *Universal Secure Registry LLC v.*  
 12 *Apple Inc.*, 10 F.4th 1342, 1353 (Fed. Cir. 2021) (using “long-standing conventional” technology  
 13 for its “expected” benefits not a technological advance); *Symantec*, 838 F.3d at 1319-21; Mot. 11.

### 14 3. MasterObjects’ Cases Are Inapposite

15 MasterObjects relies on inapposite decisions: *Core Wireless Licensing S.A.R.L. v. LG Elec-*  
 16 *tronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018), and *Uniloc USA, Inc. v. LG Electronics USA, Inc.*,  
 17 957 F.3d 1303 (Fed. Cir. 2020). Opp. 17. In *Core Wireless*, the claims were eligible because they  
 18 recited a specific improvement—“an improved user interface for electronic devices, particularly  
 19 those with small screens” and “restrain[ed] the type of data that can be displayed.” 880 F.3d at  
 20 1363. Here, the claims do not require a user interface *at all*, let alone an improved one, ’024 patent,  
 21 11:65-66, and, as discussed, results can be *anything* from *any* source displayed in *any* way—the  
 22 opposite of *Core Wireless*. In *Uniloc*, the claims specifically improved “the communication sys-  
 23 tem itself,” “allowing primary stations to send inquiry messages and conduct polling simultane-  
 24 ously” and thereby reduced “latency.” 957 F.3d at 1305, 1307-08. In contrast, here, the specifi-  
 25 cation does not provide any improvement in asynchronous communication—the claims merely  
 26 use *existing* computer technology to retrieve results in real time. *Supra* at 3.

27 MasterObjects’ claims are just as abstract as the purportedly improved computer claims in  
 28 the cases Meta discussed (Mot. 8-10 & n.5), nearly all of which MasterObjects ignores.

## 1           **B.       MasterObjects Identifies Nothing Inventive**

2           At step two, the Court must determine whether the claims add something inventive “apart  
3 from” the abstract idea. *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1348-  
4 49 (Fed. Cir. 2019). MasterObjects does not meaningfully undertake this inquiry and identifies  
5 nothing inventive apart from the abstract idea itself and other conventional functionality.

6           In particular, MasterObjects rehashes the same three features from step one, arguing that  
7 “asynchronously, usability test, and server-side cache limitations provide inventive concepts.”  
8 Opp. 20. Just as those added nothing non-abstract, they also add nothing inventive. *Supra* at 3-4;  
9 *Chamberlain*, 935 F.3d at 1349 (“Wireless communication cannot be an inventive concept here,  
10 because it is the abstract idea that the claims are directed to.”); *BSG*, 899 F.3d at 1291 (“As a  
11 matter of law, narrowing or reformulating an abstract idea does not add ‘significantly more’ to  
12 it.”). Nor does using a cache—a thoroughly conventional feature for storing data—on the server  
13 instead of the client add something significant to the abstract idea. *See supra* at 3.

14           Finally, as a last-ditch effort to stave off ineligibility, MasterObjects argues, without ex-  
15 planation, that there is “[a]t the least” a fact issue. Opp. 22.<sup>4</sup> But , where, as here, the specifica-  
16 tions and claim language show the claims lack eligibility, the Federal Circuit holds claims ineligi-  
17 ble as a matter of law despite patentees’ conclusory assertions of fact issues. *See, e.g., Simio*, 983  
18 F.3d at 1365; *Yu v. Apple Inc.*, 1 F.4th 1040, 1046 (Fed. Cir. 2021); *FairWarning IP, LLC v. Iatric*  
19 *Sys., Inc.*, 839 F.3d 1089, 1097 (Fed. Cir. 2016).<sup>5</sup> Summary judgment of ineligibility is warranted.

## 20           **III.       NON-INFRINGEMENT**

### 21           **A.       Meta Does Not Infringe the Asynchronous Limitations**

22           As shown in Meta’s opening brief, under the Court’s construction of “asynchronous,” Meta  
23 does not infringe as a matter of law. In opposition, MasterObjects takes a shotgun approach and

24 <sup>4</sup> At most, MasterObjects suggests that there is a factual dispute over whether “‘a claim element’”  
25 is “‘conventional.’” Opp. 22. But MasterObjects never says which “element” or why. To the  
26 extent MasterObjects is referring to the asynchronous communication, usability tests, and a server  
cache, those add nothing inventive as a matter of law, as discussed.

27 <sup>5</sup> *See also Bot M8*, 4 F.4th at 1351 (expert testimony “insufficient ‘to forestall summary judg-  
28 ment’”); *CareDx, Inc. v. Natera, Inc.*, 40 F.4th 1371, 1377 (Fed. Cir. 2022) (“expert testimony and  
other extrinsic evidence was contrary to, and therefore could not overcome, the admissions in the  
specification”); *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368-69 (Fed. Cir. 2018) (“eligibility has  
in many cases been resolved on ... summary judgment”).

1 raises a host of arguments in the hopes of creating the impression of a question of fact. But, in  
 2 doing so, MasterObjects ignores the key issue: the Court’s construction is clear and requires that  
 3 “each side of the communication is free to communicate without waiting for the other side.” Dkt.  
 4 206-3. MasterObjects does not (and cannot accurately) deny that Meta’s accused servers are never  
 5 “free to communicate” with a client without first waiting for the client to send a request; rather the  
 6 servers always “wait for the other side” in contravention to the construction. *See* Mot. at 15-16.  
 7 Indeed, MasterObjects cannot accurately deny that the server can only respond to a query from the  
 8 client, and it can only send one response to that query. *See* Dkt. 229-1 (Peck Rpt.) ¶¶ 63-65; Dkt.  
 9 229-2 (Black Rpt.) ¶¶ 50, 58-59; Dkt. 229-3 (Smedley Tr.) at 156:20-157:4. Given this undisputed  
 10 record, summary judgment of non-infringement should be entered.

11 Throughout its opposition, MasterObjects attempts to “construe the construction” of “asyn-  
 12 chronous” to reshape it into a new term MasterObjects hopes will better support its infringement  
 13 positions. These new twists on the construction should be soundly rejected.

#### 14 **1. The Construction of “Asynchronous” is Clear And Requires The** 15 **Server To Be Free To “Push” Data Without Waiting for the Client**

16 MasterObjects’ primary argument for reconstruing “asynchronous” is that the server some-  
 17 how need not be able to communicate without waiting for a client request. This is foreclosed by  
 18 the plain language of the construction itself: “*each side* of the communication is free to communi-  
 19 cate without waiting for the *other side*.” Dkt. 206-3. MasterObjects’ expert, Mr. Peck, conceded  
 20 that the “sides” of the communication are the client and server, Dkt. 228-9 (Peck Tr.) at 162:21-  
 21 163:5, and so the construction expressly requires that the server, too, is free to communicate with  
 22 the client without waiting for the client first. And the specification highlights the server’s ability  
 23 to “automatically push[] to the client” as a benefit of the claimed invention. *See* ’024 Patent, 6:15-  
 24 16 (“data are automatically pushed to the client”); *id.* at 12:32-34.

25 MasterObjects argues that the adopted construction was “briefed by both sides as not re-  
 26 quiring a ‘server push’ limitation.” Opp. 10. This is false. Meta explicitly argued otherwise: that  
 27 under the adopted construction “*either side is free* to communicate without waiting for the other”  
 28 and that this “is a natural characteristic of a system in which both the client and *server can initiate*

1 **communications** at any point in time.” Dkt. 57 (Meta CC Resp. Br.) at 22. And, while it reverses  
 2 field now, MasterObjects itself acknowledged in its claim construction brief that “[t]hese claims  
 3 do not require the client or **server system** to wait its turn; each is free to send messages on its own  
 4 timetable. The claims also do not require the messages to be sent or received in any particular  
 5 order.” Dkt. 55 (MasterObjects CC Br.) at 24.

6 MasterObjects also argues that “[t]he claims themselves **require** that the client initiate the  
 7 conversation.” Opp. 11 (emphasis in original). Here again, MasterObjects’ argument cannot be  
 8 squared with what it said during claim construction: “The claims also **do not require the messages**  
 9 **to be sent or received in any particular order.**” Dkt. 55 at 24. And MasterObjects’ new construc-  
 10 tion is also inconsistent with the plain language of at least one claim that expressly requires the  
 11 server to send updated information without waiting for another request from the client. *See, e.g.,*  
 12 ’024 Patent, cl. 30 (“the server system automatically sends messages containing new<sup>6</sup> results to  
 13 the client object as updated data in response to a previous query becomes available”).

14 MasterObjects also errs in leaning on the fact that it proposed the construction adopted by  
 15 the Court. *See, e.g.,* Opp. at 10 (“as proposed by MasterObjects”), 26-27 (“MasterObjects’ con-  
 16 struction”). That MasterObjects proposed the construction does not change its meaning, or add or  
 17 remove words from it. Nor does it mean that MasterObjects’ reinterpretation must be correct. On  
 18 the contrary, Courts often adopt constructions that are detrimental to the party that proposed them  
 19 and, like here, parties often propose constructions without appreciating that those constructions  
 20 will ultimately cause them problems. *See generally Trustees of Bos. Univ. v. Everlight Elecs. Co.,*  
 21 896 F.3d 1357, 1365 (Fed. Cir. 2018) (“Having obtained a claim construction that included a  
 22 purely amorphous layer within the scope of the claim, BU then needed to successfully defend  
 23 against an enablement challenge as to the claim’s full scope.”)

## 24 **2. MasterObjects’ “Session” Argument Should Be Rejected**

25 MasterObjects’ second main attack is to read into the claims a requirement that confines  
 26 “asynchronous” to apply only during what MasterObjects calls a “search session.” Opp. 11. This  
 27 argument too should fail.

28 <sup>6</sup> Corrected from “Previously Presented.” ’024 Patent, Certificate of Correction.

1 The terms “session” or “search session” are never used in the asserted claims, and are im-  
 2 ported by MasterObjects whole cloth. *See, e.g.*, ’024 Patent, cl. 1. The lack of reference to a  
 3 session in the claims was neither a mistake nor a function of vague claim drafting; it was a delib-  
 4 erate choice. This is evident because when MasterObjects intended to limit to a session the claims  
 5 in *other* patents not asserted in the case, it did so explicitly. For example MasterObjects’ unas-  
 6 serted ’529 patent expressly includes a limitation which “allows the client system to send via the  
 7 network, and *within a session* between the client system and the server system, a lengthening  
 8 string.” Dkt. 206-13 (’529 Patent), cl. 1. It also recites that the server returns results “while the  
 9 additional characters are being input and the corresponding consecutive queries are being trans-  
 10 mitted and the lengthening string is being modified *during the session*.” *Id.*<sup>7</sup>

11 Even improperly reading MasterObjects’ new “session” requirement into the claims does  
 12 not stave off summary judgment. MasterObjects proffers no evidence that, even in a “session,”  
 13 the accused Typeahead server ever communicates with the client first without waiting for a request  
 14 from the client. And no such evidence exists: Meta’s Typeahead servers are solely configured to  
 15 respond to requests from clients and never initiate communications without “waiting for” the client  
 16 first. *See* Dkt. 229-1 (Peck Rpt.) ¶¶ 63-65; Dkt. 229-2 (Black Rpt.) ¶¶ 50, 58-59; Dkt. 229-3  
 17 (Smedley Tr.) 156:20-157:4.

18 In sum, the record is clear: the claims as construed under MasterObjects’ proposed con-  
 19 struction require the accused servers to be free to communicate with clients without waiting for  
 20 those clients to initiate the communication first. This never happens in the accused system, so  
 21 summary judgment of non-infringement should be entered.

## 22 **B. Meta Does Not Infringe the Query Message Limitations**

23 MasterObjects does not dispute that Typeahead cannot infringe the asserted claims if the  
 24 Court adopts the *Google* construction of the Query Messages terms. There is no dispute that  
 25 Typeahead re-sends the entire input string in each query message as opposed to sending only the  
 26 new or changed characters to be appended to a string of prior transmitted characters collected at  
 27

28 <sup>7</sup> Given this express claim language, it should come as no surprise that the constructions in prior cases that included the ’529 patent referenced a session. *See* Dkt. 55 at 13-16.



1 the server. If the Court finds, as Judge Hamilton did in the *Google* case, that the specification  
 2 limits the claims to sending only the differences in the input string, summary judgment of non-  
 3 infringement inexorably follows.

4 MasterObjects’ primary response in opposition is that the Court should not revisit the con-  
 5 struction entered before the case was transferred. But it has no answer for the fact that, although  
 6 Judge Albright stated he was entering MasterObjects’ proposed construction, he never issued an  
 7 order that explained his reasoning or formally entered the construction. Thus, while MasterObjects  
 8 seeks to apply the reconsideration standard, Opp. 3, the lack of a written order setting forth Judge  
 9 Albright’s rationale prevents the relevant analysis. And, in all events, the Court is free to revisit  
 10 any claim construction before it renders judgment or submits the case to the jury, and, given the  
 11 parties’ disputes, should do so here. *In re Papst Licensing Digit. Camera Pat. Litig.*, 778 F.3d  
 12 1255, 1261 (Fed. Cir. 2015) (“a district court may (and sometimes must) revisit, alter, or supple-  
 13 ment its claim constructions”); *c.f.*, *Life Tech. Corp. v. Biosearch Techs., Inc.*, No. C 12-00852  
 14 WHA, 2012 WL 1534891 (N.D. Cal. May 1, 2012) (applying reconsideration standard where the  
 15 court issued a written claim construction order explaining its rationale).<sup>8</sup>

16 As to the merits of the construction, MasterObjects recycles its oft-repeated argument that  
 17 Meta is reading a mere example from the specification into the claims. Opp. 3. Not so. As set  
 18 forth in Meta’s opening brief, the consistent usage and singular description in the common speci-  
 19 fication establishes that “the invention” itself—not the QuestObjects embodiment—requires that  
 20 the client send to the server only the changes input by the user since the last transmission. Mot.  
 21 18-20. The specification, for example, states that “***the protocol of the present invention*** provides  
 22 a number of messages that allow the Client Quester to send ***just the changes*** to the input buffer,  
 23 instead of sending the entire input buffer.” ’024 Patent, 20:14-17; *see Regents of Univ. of Minn.*  
 24 *V. AGA Med. Corp.*, 717 F.3d 929, 936 (Fed. Cir. 2013) (“features of the ‘present invention’ as a  
 25 whole, ... limit[] the scope”). And the specification exclusively describes sending only the  
 26

---

27 <sup>8</sup> MasterObjects’ position here is also inconsistent with its efforts to rewrite Judge Albright’s con-  
 28 struction of “asynchronous” (which Meta does not challenge here). It cannot be the case that it is  
 somehow proper for MasterObjects to seek a new or altered construction of one term, but yet  
 improper for Meta to do the same for a second term.

changes, not that it can be done either way. *See* Mot. 20; *see also St. Clair Intell. Prop. Consultants, Inc. v. Canon Inc.*, 412 F. App'x 270, 273 (Fed. Cir. 2011) (limiting scope of claim term where “the specification uniformly describes” one solution); *Wis. Alumni Research Found. v. Apple Inc.*, 905 F.3d 1341, 1351 (Fed. Cir. 2018) (“Where, as here, a patent repeatedly and consistently characterizes a claim term in a particular way, it is proper to construe the claim term in accordance with that characterization.”) (citations and quotations omitted).

Turning to collateral estoppel, MasterObjects contends it does not apply because the language of the asserted claims has changed since Judge Hamilton’s and the Federal Circuit’s decisions in the *Google* case. Opp. 5-9. But this is wrong on the facts and the law.

Though amended, the claims of the asserted patents still reflect the clear teaching of the specification requiring that only the changes are sent to the server. The ’024 patent, claim 1, for example, recites the same concept from the ’529 patent of a “lengthening string” that is formed by “additional characters.” Dkt. 206-5 (’024 Patent), cl. 1; *see also id.* at 8:33-36 (“sending a character-by-character string of data to an intelligent server that can be configured to immediately analyze the lengthening string character-by-character”). Likewise, the ’628 patent requires a “lengthening string of characters” formed by user input, and for the client to send “multiple query messages corresponding to multiple versions of said input.” Dkt. 206-6 (’628 Patent), cl. 1. The ’866 and ’073 patents require “modification by a user of a search query” or “entry of a content search query” leading to transmission of “an incomplete version of the search query” or “an incomplete search query.” Dkt. 206-7 (’866 Patent), cl. 1; Dkt. 206-8 (’073 Patent), cl. 1. Tellingly, when confronted with the Patent Office’s rejections for obviousness-type double patenting in light of the ’529 patent, MasterObjects did not ask then “what of the new claim language?” as it does here. Opp. 5. Rather, it conceded the point and filed a terminal disclaimer rather than contest the Patent Office’s determination that the asserted claims cover at best an obvious variation of the claims of the ’529 patent. Dkt. 54-8 (’024 TD); *see also* Dkt. 54-9 (’628 TD); Dkt. 54-10 (’866 TD); Dkt. 54-11 (’073 TD); *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1168 (Fed. Cir. 2018) (“a terminal disclaimer is a strong clue that a patent examiner and, by concession, the applicant, thought the claims in the continuation lacked a patentable distinction over the parent”).



MasterObjects runs afoul of the law when it contends that the inquiry is whether “the claims [are] ‘materially indistinct’ from the prior claims.” Opp. 8 (citing no authority). The law is clear that “collateral estoppel is not limited to patent claims that are identical. Rather, it is the identity of the *issues* that were litigated that determines whether collateral estoppel should apply.” *Nestle USA, Inc. v. Steuben Foods, Inc.*, 884 F.3d 1350, 1352 (Fed. Cir. 2018) (emphasis in original) (citations omitted); *see also Ohio Willow Wood Co. v. Alps S. LLC*, 735 F.3d 1333, 1342 (Fed Cir. 2013). MasterObjects does not dispute that the specification of the asserted patents is identical to the specification addressed in *Google* in this District and the Federal Circuit. And the Court in *Google* held that that specification limits the scope of the invention, and thus of the claims, which is exactly what Meta contends in this action. *See MasterObjects, Inc. v. Google, Inc.*, No. 4:11-cv-01054, 2013 WL 2319087, at \*12 (N.D. Cal. May 28, 2013), *aff’d*, 582 F. App’x 893 (Fed. Cir. 2014). The issue is thus identical, and collateral estoppel applies. *See, e.g.*, Dkts. 54, 57, 59.

#### IV. THERE IS NO EVIDENCE THAT ANY INFRINGEMENT WAS WILLFUL

MasterObjects’ opposition confirms that it cannot show that Meta had knowledge of the Asserted Patents, knowledge of infringement, or intent to infringe before the filing of its Complaint. Nor can MasterObjects demonstrate a genuine question of material fact based on Meta’s post-suit conduct. It does not point to any evidence upon which a reasonable jury could find Meta’s conduct willful, because there is none. Instead, MasterObjects repeats its well-worn excuse that Meta hid evidence. But, here too, that allegation is false, as the record confirms. In truth, there is no evidence of willfulness because Meta was not willful.

##### A. Meta Lacked The Requisite Knowledge and Intent to Infringe

As an initial matter, MasterObjects’ opposition effectively abandons its pre-suit willfulness allegations as to the ’628, ’866, and ’073 patents. MasterObjects points to no evidence that Meta knew of the ’628, ’866, or ’073 patents before it filed suit, much less that it had the specific intent to infringe them, and does not even argue that these allegations should advance to trial. Summary judgment of no pre-suit willfulness should thus be entered for all three of those patents.

As to the ’024 patent, MasterObjects argues that Meta learned of the ’024 patent *application* and *family* during prosecution of Meta’s patents. Opp. 22-23. This concession alone is

1 enough to establish that summary judgment is appropriate: knowledge only of an application or  
 2 patent family is insufficient to establish willfulness as a matter of law. Mot. 22-25. MasterObjects  
 3 deposed Meta’s in-house and outside prosecution counsel who testified consistently: there is no  
 4 evidence that Meta had any knowledge of the ’024 patent (or any asserted patent) until MasterOb-  
 5 jects filed this lawsuit. *See, e.g.*, Dkt. 229-4 (von Bargen Tr.) 11:4-12:11; *see also* Ex. 28 (King  
 6 Tr.) 91:5-8; Ex. 29 (Avery Tr.) 36:10-18; Ex. 30 (Tang Tr.) 113:21-114:2. The law is clear that  
 7 this “evidence alone is not sufficient to conclude [Meta] had knowledge of the patent for willful-  
 8 ness purposes” on summary judgment. *Intellectual Ventures I LLC v. Symantec Corp.*, 234 F.  
 9 Supp. 3d 601, 611 (D. Del. 2017), *aff’d*, 725 F. App’x 976 (Fed. Cir. 2018) (collecting cases).<sup>9</sup>

10 Even if MasterObjects could show that Meta had knowledge of the ’024 patent (it cannot),  
 11 there is no evidence that Meta had knowledge of infringement or intent to infringe before the filing  
 12 of the Complaint. MasterObjects conflates knowledge of a patent with knowledge of its infringe-  
 13 ment. But, as this Court has explained, mere knowledge of the asserted patents does not give rise  
 14 to knowledge of infringement. *MasterObjects*, 2021 WL 4685306, at \*4.

15 MasterObjects’ fallback argument—that Meta put its head in the sand to avoid knowledge  
 16 of infringement—fares no better. Willful blindness requires a showing that Meta subjectively  
 17 believed there was a high probability that the accused product infringed, and that Meta took delib-  
 18 erate actions to avoid learning of that infringement. *Roche Diagnostics Corp. v. Meso Scale Di-*  
 19 *agnostics, LLC*, 30 F.4th 1109, 1118 (Fed. Cir. 2022). MasterObjects cannot show either. First,  
 20 as discussed above, the uncontroverted evidence shows that Meta and its outside prosecution coun-  
 21 sel did not know about the asserted patents until the lawsuit was filed, and thus could not have  
 22 knowledge of any alleged infringement. Second, MasterObjects’ reliance on a rejection of a Meta  
 23 patent application based on a different MasterObjects’ patent—the unasserted ’529 patent—does  
 24

25 \_\_\_\_\_  
 26 <sup>9</sup> The cases MasterObjects cites are inapposite. In *MasterObjects, Inc. v. Amazon.com, Inc.*, No.  
 27 C 20-08103 WHA, 2021 WL 4685306 (N.D. Cal. Oct. 7, 2021), the Court was resolving a motion  
 28 to dismiss, where the pleading standard is far lower. In *Suprema*, the parties were competitors and  
 the defendant “engag[ed] in extensive market research,” including “researching and identifying  
 [competitor]’s patents.” *Suprema, Inc. v. Int’l Trade Com’n*, 626 F. App’x 273, 280-81 (Fed. Cir.  
 2015). MasterObjects admits that the parties are not competitors and offers no rationale why Meta  
 would have undertaken such efforts to learn about MasterObjects’ patents (there is none).

nothing to cure this fatal defect.<sup>10</sup> Third, MasterObjects’ attempt to create an inconsistency between in-house counsel and outside prosecution counsel is negated by the actual record. Mr. Tang did not testify that he “knew nothing of Meta’s own patent prosecutions,” as MasterObjects claims. Rather, he testified that Meta relies on outside counsel for their expertise and is kept reasonably informed of prosecutions. Dkt. 229-7 (Tang Tr.) 15:4-20, 17:22-18:11. This is entirely consistent with prosecution counsel’s testimony. Ex. 29 (Avery Tr.) 19:20-20:6, 14:23-15:7; Ex. 28 (King Tr.) 77:20-78:5. Moreover, this entire argument is a red-herring—none of this testimony viewed in the light most favorable to MasterObjects could show willful blindness as to the knowledge of *infringement* of the Asserted Patents.

Finally, MasterObjects has admitted that it did not provide notice of the Asserted Patents before filing suit. *See* Dkt. 228-19; Dkt. 134 (stipulation). MasterObjects’ failure to provide notice of infringement to Meta where Typeahead was available years before this lawsuit contradicts a finding of willfulness. *Radware, Ltd. v. F5 Networks, Inc.*, No. 5:13-cv-02024-RMW, 2016 WL 4427490, at \*3 (N.D. Cal. Aug. 22, 2016).

In sum, there is no evidence—and MasterObjects identifies none—that Meta knowingly infringed the asserted patents. Summary judgment is proper.

**B. There Is No Evidence Meta Intended to Infringe After the Complaint Was Filed**

Last, MasterObjects disregards this Court’s recent precedent finding that the complaint itself cannot serve as notice for purposes of willfulness. *Sonos, Inc. v. Google LLC*, No. C 21-07559-WHA, 2022 WL 799367, at \*5 (N.D. Cal. Mar. 16, 2022). Nevertheless, even if the Court were to consider the merits of MasterObjects’ post-suit argument, its claims likewise fail. Specifically, MasterObjects’ complaint that Meta asked the Court to resolve a claim construction dispute

<sup>10</sup> MasterObjects’ suggestion that a reference to “typeahead” in Meta’s patent applications shows knowledge of infringement as to MasterObjects’ patents is nonsensical. The patents themselves acknowledge that “typeahead” is a generic term for technology that predates MasterObjects’ patents, *see, e.g.*, ’024 Patent, 3:44-47 (describing “current systems” as including “type-ahead”) and there is no evidence that Meta’s patent applications used the term to refer to MasterObjects’ asserted patents or their claimed inventions. *See also, e.g.*, Ex. 31, (van den Oord Tr.) 80:13-22 (named inventor admitting website with auto complete “not necessarily” using claimed invention).

1 and its litigation-driven criticism of the strength of two of Meta’s anticipation references,<sup>11</sup> does  
 2 not distinguish this from a typical infringement case. Mot. 22-25. And, notably, MasterObjects  
 3 does not challenge Meta’s non-infringement defenses or numerous other invalidity defenses, in-  
 4 cluding obviousness, written description, and ineligible subject matter.

5 Viewing the evidence in the light most favorable to MasterObjects, no reasonable jury  
 6 could find for MasterObjects. There is no evidence that Meta had the requisite knowledge and  
 7 intent to infringe, and so the Court should grant Meta’s motion of no willful infringement.

8 **V. IF MASTEROBJECTS’ EXPERT, JOHN PECK, IS EXCLUDED, SUMMARY**  
 9 **JUDGMENT SHOULD FOLLOW**

10 In its Motion, Meta requested summary judgment should the Court grant Meta’s co-pend-  
 11 ing *Daubert* Motion and exclude MasterObjects’ liability expert, John Peck, from testifying con-  
 12 cerning the many new and unsupported infringement theories added to his report but absent from  
 13 MasterObjects’ infringement contentions and discovery responses.<sup>12</sup> Mot. 21-22. MasterObjects’  
 14 does not oppose this ground for summary judgment (or respond to it at all), and so, should Meta’s  
 15 *Daubert* concerning Mr. Peck be granted, summary judgment of non-infringement should follow.  
 16 See *Centricut, LLC v. Esab Grp., Inc.*, 390 F.3d 1361, 1369 (Fed. Cir. 2004); *MasterObjects Inc.*  
 17 *v. Amazon.com, Inc.*, No. 3:20-cv-08103-WHA (Dkt. 415) at 16 (“Consequently, with no relevant  
 18 expert testimony [that the accused “underlying data source” could “itself be queried”], the order  
 19 finds that MasterObjects cannot prove infringement.”) (citing *Centricut*).

20 **VI. CONCLUSION**

21 For the foregoing reasons, Meta respectfully requests that the Court grant Meta’s Motion  
 22 for Summary Judgment.

25 <sup>11</sup> Prior art raised during Patent Office proceedings can and does invalidate patent claims. *IPXL*  
 26 *Holdings, L.L.C. v. Amazon.com*, 430 F.3d 1377, 1381 (Fed. Cir. 2005) (“a patent may be found  
 to be anticipated on the basis of a reference that had properly been before the patent examiner”).

27 <sup>12</sup> Included among these are Mr. Peck’s belated theories confusing the “cache” with the “content  
 28 source” in many of the asserted claims in this action. Dkt. 207. Thus, MasterObjects errs in its  
 contention that “Meta does not make a SJ non-infringement argument on caching. This is because  
 it infringes under the agreed constructions.” Opp. 2, n.1. Meta does not practice the caching terms  
 as construed.

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